

House File 2394 - Introduced

HOUSE FILE 2394
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO HSB 537)

A BILL FOR

1 An Act relating to various matters involving insurance and
2 the insurance division of the department of commerce, and
3 including penalties.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 502.305, subsection 2, Code 2016, is
2 amended to read as follows:

3 2. *Filing.* Except as provided in ~~subsection 10~~ section
4 502.302, subsection 3, and section 502.304A, subsection 3,
5 paragraph "g", a person who files a registration statement
6 or a notice filing shall pay a filing fee ~~of one-tenth of~~
7 ~~one percent of the proposed aggregate sales price of the~~
8 ~~securities to be offered to persons in this state pursuant to~~
9 ~~the registration statement or notice filing. However, except~~
10 ~~as provided in subsection 10, section 502.302, subsection 1,~~
11 ~~paragraph "a", and section 502.304A, subsection 3,~~ paragraph
12 "g", the annual filing fee shall not be less than fifty dollars
13 ~~or more than one thousand dollars~~ as prescribed by rules
14 adopted pursuant to chapter 17A. The administrator shall
15 retain the filing fee even if the notice filing is withdrawn or
16 the registration is withdrawn, denied, suspended, revoked, or
17 abandoned. The fees collected under this subsection shall be
18 deposited as provided in section 505.7. The administrator may
19 adopt rules requiring a filing to be made electronically. The
20 rules may provide for such electronic filing either directly
21 with the administrator or with a designee of the administrator.
22 The rules may require that the filer pay any reasonable costs
23 charged by the designee of the administrator for processing the
24 filings and that the filer submit any fees paid through the
25 designee.

26 Sec. 2. Section 502.305, subsection 10, Code 2016, is
27 amended by striking the subsection.

28 Sec. 3. Section 502.306, subsection 1, paragraph a, Code
29 2016, is amended to read as follows:

30 a. The registration statement as of its effective date
31 or before the effective date in the case of an order denying
32 effectiveness, ~~an amendment under section 502.305, subsection~~
33 ~~10, as of its effective date,~~ or a report under section
34 502.305, subsection 9, is incomplete in a material respect or
35 contains a statement that, in the light of the circumstances

1 under which it was made, was false or misleading with respect
2 to a material fact.

3 Sec. 4. NEW SECTION. 507E.3A **Fraudulent sales practices —**
4 **penalty.**

5 1. A person commits a class "D" felony if the person, with
6 the intent to defraud another person in connection with any
7 sale, solicitation, or negotiation of insurance in this state,
8 willfully does any of the following:

9 a. Employs any deception, device, scheme, or artifice to
10 defraud.

11 b. Misrepresents, conceals, or suppresses any material fact.

12 c. Engages in any act, practice, or course of business which
13 operates as a fraud or deceit upon any person.

14 2. Notwithstanding subsection 1, a person commits a class
15 "C" felony if the person violates subsection 1, and such
16 violation results in a loss of more than ten thousand dollars.

17 Sec. 5. Section 521A.1, Code 2016, is amended by adding the
18 following new subsections:

19 NEW SUBSECTION. 5A. "*Group-wide supervisor*" means a
20 regulatory official who is authorized, and who is determined
21 or acknowledged by the commissioner pursuant to section
22 521A.6B to have sufficient significant contacts with an
23 internationally active insurance group, to engage in conducting
24 and coordinating group-wide supervision of the internationally
25 active insurance group.

26 NEW SUBSECTION. 7A. "*Internationally active insurance group*"
27 means an insurance holding company system that includes an
28 insurer registered under section 521A.4 and that meets all of
29 the following criteria:

30 a. The insurance holding company system has premiums written
31 in at least three countries.

32 b. The percentage of gross premiums written outside the
33 United States is at least ten percent of the insurance holding
34 company system's total gross written premiums.

35 c. Based on a three-year rolling average, the total assets

1 of the insurance holding company system are at least fifty
2 billion dollars or the total gross written premiums of the
3 insurance holding company system are at least ten billion
4 dollars.

5 Sec. 6. Section 521A.6A, subsection 1, unnumbered paragraph
6 1, Code 2016, is amended to read as follows:

7 With respect to any insurer registered under section
8 521A.4 and in accordance with ~~subsection 3~~ of this section,
9 the commissioner shall have the power to participate in a
10 supervisory college for any domestic insurer that is part
11 of an insurance holding company system with international
12 operations in order to determine compliance by the insurer with
13 this chapter. The powers of the commissioner with respect
14 to supervisory colleges include but are not limited to the
15 following:

16 Sec. 7. Section 521A.6A, subsections 2 and 3, Code 2016, are
17 amended by striking the subsections.

18 Sec. 8. NEW SECTION. **521A.6B Group-wide supervision of**
19 **internationally active insurance groups.**

20 1. *a.* The commissioner may act as the group-wide supervisor
21 of an internationally active insurance group in accordance with
22 the provisions of this section. However, the commissioner may
23 authorize another regulatory official to act as the group-wide
24 supervisor where the internationally active insurance group
25 meets any of the following conditions:

26 (1) Does not have substantial insurance operations in the
27 United States.

28 (2) Has substantial insurance operations in the United
29 States, but not in Iowa.

30 (3) Has substantial insurance operations in the United
31 States and in Iowa, but the commissioner has determined
32 pursuant to the factors set forth in subsections 2 and 6 that
33 another regulatory official is the appropriate group-wide
34 supervisor.

35 *b.* In response to a request from an insurance holding

1 company system that does not otherwise qualify as an
2 internationally active insurance group, the commissioner may
3 make a determination of or acknowledge a group-wide supervisor
4 for such an insurance holding company system pursuant to this
5 section.

6 2. a. In cooperation with other state, federal, and
7 international regulatory agencies, the commissioner shall
8 identify a single group-wide supervisor for an internationally
9 active insurance group. The commissioner may determine that
10 the commissioner is the appropriate group-wide supervisor
11 for an internationally active insurance group that conducts
12 substantial insurance operations concentrated in this state,
13 or the commissioner may acknowledge that a regulatory official
14 from another jurisdiction is the appropriate group-wide
15 supervisor for the internationally active insurance group. In
16 making a determination or acknowledgment under this paragraph
17 "a", the commissioner shall consider the following factors:

18 (1) The place of domicile of the insurers within the
19 internationally active insurance group that hold the largest
20 share of the group's written premiums, assets, or liabilities.

21 (2) The place of domicile of the top-tiered insurers in the
22 insurance holding company system of the internationally active
23 insurance group.

24 (3) The location of the executive offices or largest
25 operational offices of the internationally active insurance
26 group.

27 (4) Whether another regulatory official is acting as
28 or is seeking to act as the group-wide supervisor of the
29 internationally active insurance group under a regulatory
30 system that the commissioner determines to be either of the
31 following:

32 (a) Substantially similar to the system of regulation
33 provided under the laws of this state.

34 (b) Otherwise sufficient in terms of providing for
35 group-wide supervision, enterprise risk analysis, and

1 cooperation with other regulatory officials.

2 (5) Whether another regulatory official acting as
3 or seeking to act as the group-wide supervisor for the
4 internationally active insurance group provides the
5 commissioner with reasonably reciprocal recognition and
6 cooperation.

7 *b.* Notwithstanding paragraph "a", even if the commissioner
8 is identified pursuant to this subsection as the group-wide
9 supervisor of an internationally active insurance group,
10 the commissioner may determine that it is appropriate to
11 acknowledge another regulatory official to serve as the
12 group-wide supervisor of the internationally active insurance
13 group.

14 *c.* The acknowledgment of a group-wide supervisor pursuant
15 to this subsection shall be made after consideration of the
16 factors listed in paragraph "a", subparagraphs (1) through
17 (5), and shall be made in cooperation with and subject to the
18 acknowledgment of other regulatory officials involved with
19 supervision of members of the internationally active insurance
20 group, and in consultation with the internationally active
21 insurance group.

22 3. Notwithstanding any other provision of law, when another
23 regulatory official is acting as the group-wide supervisor of
24 an internationally active insurance group, the commissioner
25 shall acknowledge that regulatory official as the group-wide
26 supervisor of the internationally active insurance group.
27 However, the commissioner shall make a new determination or
28 acknowledgment as to the appropriate group-wide supervisor for
29 the internationally active insurance group in the event that a
30 material change in the internationally active insurance group
31 results in either of the following:

32 *a.* The internationally active insurance group's insurers
33 domiciled in Iowa holding the largest share of the group's
34 premiums, assets, or liabilities.

35 *b.* Iowa being the place of domicile of the top-tiered

1 insurers in the insurance holding company system of the
2 internationally active insurance group.

3 4. Pursuant to section 521A.6, the commissioner is
4 authorized to collect from any insurer registered pursuant to
5 section 521A.4 all information necessary to determine whether
6 it is appropriate for the commissioner to act as the group-wide
7 supervisor of an internationally active insurance group or
8 to acknowledge another regulatory official to act as the
9 group-wide supervisor of the internationally active insurance
10 group. Prior to issuing a determination or acknowledgment
11 pursuant to this section, the commissioner shall notify the
12 insurer registered pursuant to section 521A.4 and the ultimate
13 controlling person within the internationally active insurance
14 group of the pending determination or acknowledgment. The
15 insurer and the internationally active insurance group shall
16 have not less than thirty days to provide the commissioner with
17 additional information pertinent to the commissioner's pending
18 determination or acknowledgment. The commissioner shall
19 publish the identity of the internationally active insurance
20 groups that the commissioner has determined are subject to
21 group-wide supervision by the commissioner.

22 5. If a determination is made that the commissioner is the
23 appropriate group-wide supervisor for an internationally active
24 insurance group, the commissioner is authorized to engage in
25 any of the following group-wide supervision activities:

26 a. Assessing the enterprise risks within the internationally
27 active insurance group to ensure all of the following:

28 (1) That the material financial condition and liquidity
29 risks to members of the internationally active insurance group
30 that are engaged in the business of insurance are identified
31 by management.

32 (2) That reasonable and effective mitigation measures are
33 in place.

34 b. Requesting, from any member of an internationally active
35 insurance group subject to the commissioner's group-wide

1 supervision, information necessary and appropriate to assess
2 enterprise risk, including but not limited to information about
3 the members of the internationally active insurance group
4 regarding all of the following:

5 (1) Governance, risk assessment, and management.

6 (2) Capital adequacy.

7 (3) Material intercompany transactions.

8 c. Coordinating and, through the authority of the
9 regulatory officials of the jurisdictions where members of
10 the internationally active insurance group are domiciled,
11 compelling the development and implementation of reasonable
12 measures designed to ensure that the internationally active
13 insurance group is able to timely recognize and mitigate
14 enterprise risks to members of the internationally active
15 insurance group that are engaged in the business of insurance.

16 d. Communicating with other state, federal, and
17 international regulatory agencies for members within the
18 internationally active insurance group and sharing relevant
19 information, subject to the confidentiality provisions of
20 section 521A.7, through supervisory colleges as set forth in
21 section 521A.6A or otherwise.

22 e. Entering into agreements with or obtaining documentation
23 from any insurer registered under section 521A.4, any member
24 of an internationally active insurance group, and any other
25 state, federal, or international regulatory agency for members
26 of the internationally active insurance group, that provides
27 the basis for or otherwise clarifies the commissioner's role as
28 group-wide supervisor of an internationally active insurance
29 group, including provisions for resolving disputes with other
30 regulatory officials. Such agreements or documentation shall
31 not serve as evidence in any proceeding that any insurer or
32 person within an insurance company holding company system not
33 domiciled or incorporated in this state is doing business in
34 this state or is otherwise subject to jurisdiction in this
35 state.

1 *f.* Other activities of group-wide supervision, consistent
2 with the authority and purposes set forth in this section, as
3 considered necessary by the commissioner.

4 6. If the commissioner acknowledges that another regulatory
5 official from a jurisdiction that is not accredited by the
6 national association of insurance commissioners is the
7 group-wide supervisor of an internationally active insurance
8 group, the commissioner may reasonably cooperate through a
9 supervisory college or otherwise, with group-wide supervision
10 undertaken by that regulatory official provided that all of the
11 following occur:

12 *a.* The commissioner's cooperation is in compliance with the
13 laws of this state.

14 *b.* The regulatory official acknowledged as the group-wide
15 supervisor of the internationally active insurance group also
16 recognizes and cooperates with the commissioner's activities
17 as a group-wide supervisor for other internationally active
18 insurance groups, where applicable. If such recognition and
19 cooperation is not reasonably reciprocal, the commissioner may
20 refuse recognition and cooperation to that regulatory official.

21 7. The commissioner is authorized to enter into agreements
22 with or obtain documentation from any insurer registered under
23 section 521A.4, any affiliate of the insurer, and any other
24 state, federal, or international regulatory agency for members
25 of the internationally active insurance group, that provides
26 the basis for or otherwise clarifies another regulatory
27 official's role as group-wide supervisor of an internationally
28 active insurance group.

29 8. An insurer registered under section 521A.4 that is
30 subject to this section shall be liable for and shall pay the
31 reasonable expenses of the commissioner's participation in
32 the administration of this section, including the engagement
33 of attorneys, actuaries, accountants, and other experts not
34 otherwise a part of the commissioner's staff and all reasonable
35 travel expenses. Any persons so retained shall be under the

1 direction and control of the commissioner and shall act in a
2 purely advisory capacity.

3 9. The commissioner shall adopt rules pursuant to chapter
4 17A to administer this section.

5 Sec. 9. Section 521A.7, subsection 1, Code 2016, is amended
6 to read as follows:

7 1. All information, documents, and copies thereof obtained
8 by or disclosed to the commissioner or any other person in
9 the course of an examination or investigation made pursuant
10 to section 521A.6 or 521A.6A, and all information reported
11 or provided to the commissioner pursuant to sections 521A.4
12 and, 521A.5, 521A.6A, and 521A.6B, shall be given confidential
13 treatment and, shall not be subject to subpoena, shall not be
14 subject to discovery or admissible in evidence in a private
15 civil action, and shall not be made public by the commissioner
16 or any other person, except to insurance departments of other
17 states, without the prior written consent of the insurer to
18 which it pertains unless the commissioner, after giving the
19 insurer and its affiliates who would be affected thereby,
20 notice and opportunity to be heard, determines that the
21 interests of policyholders, shareholders, or the public will
22 be served by the publication thereof, in which event the
23 commissioner may publish all or any part thereof in such
24 manner as the commissioner may deem appropriate. However, the
25 commissioner is authorized to use the information, documents,
26 or copies obtained by, disclosed to, or reported or provided
27 to the commissioner as described in this subsection, in the
28 furtherance of any regulatory or legal action brought as a part
29 of the commissioner's official duties.

30 Sec. 10. Section 523I.808, Code 2016, is amended to read as
31 follows:

32 **523I.808 Examination fee.**

33 An examination fee shall be submitted with the cemetery's
34 annual report in an amount equal to five dollars for each
35 certificate of interment rights issued during the ~~fiscal~~ year

1 time period covered by the report. The cemetery may charge
2 the examination fee directly to the purchaser of the interment
3 rights.

4 Sec. 11. Section 523I.813, subsections 1 and 2, Code 2016,
5 are amended to read as follows:

6 1. A perpetual care cemetery shall file an annual report at
7 the end of each ~~fiscal year~~ reporting period of the cemetery.

8 2. The report shall be filed with the commissioner within
9 four months following the end of the cemetery's ~~fiscal year~~
10 reporting period in the form required by the commissioner.

11 EXPLANATION

12 The inclusion of this explanation does not constitute agreement with
13 the explanation's substance by the members of the general assembly.

14 This bill relates to various matters involving insurance and
15 the insurance division of the department of commerce.

16 UNIFORM SECURITIES ACT. Code section 502.305(2) is
17 amended to provide that the filing fee for certain securities
18 registration filings will be prescribed by rule instead of
19 pursuant to a statutory formula based on the proposed aggregate
20 sales price of the securities to be offered.

21 Code section 502.305(10) is stricken, eliminating certain
22 requirements for amendments to registration statements when
23 securities are sold in the state in excess of the amount
24 registered at the time of sale. Code section 502.306(1)(a) is
25 amended to remove a cross-reference to the stricken subsection.

26 INSURANCE FRAUD. New Code section 507E.3A provides that
27 a person commits a class "D" felony if the person, with
28 intent to defraud another person in connection with any
29 sale, solicitation, or negotiation of insurance, willfully
30 employs any deception, device, scheme, or artifice to defraud;
31 misrepresents, conceals, or suppresses any material fact; or
32 engages in any act, practice, or course of business which
33 operates as a fraud or deceit upon another person. A person
34 who commits such insurance fraud that results in a loss of more
35 than \$10,000 is guilty of a class "C" felony.

1 A class "D" felony is punishable by confinement for no more
2 than five years and a fine of at least \$750 but not more than
3 \$7,500. A class "C" felony is punishable by confinement for no
4 more than 10 years and a fine of at least \$1,000 but not more
5 than \$10,000.

6 INSURANCE HOLDING COMPANY SYSTEMS. Code section 521A.1 is
7 amended to add two new definitions. Code section 521A.1(5A)
8 defines a "group-wide supervisor" as a regulatory official
9 who is authorized, and who is determined or acknowledged by
10 the commissioner of insurance to have sufficient significant
11 contacts with an internationally active insurance group, to
12 engage in conducting and coordinating group-wide supervision
13 of the insurance group. Code section 521A.1(7A) defines an
14 "internationally active insurance group" as an insurance
15 holding company system that includes an insurer registered to
16 do business in this state that is a member of an insurance
17 holding company system that has premiums written in at least
18 three countries, at least 10 percent of gross premiums written
19 outside the United States, and based on a rolling three-year
20 average has total assets of at least \$50 billion or total gross
21 written premiums of at least \$10 billion.

22 Code section 521A.6A concerning supervisory colleges is
23 amended to strike subsections 2 and 3 relating to group-wide
24 supervisors. Code section 521A.6A(1) is amended to remove an
25 internal reference to subsection 3.

26 New Code section 521A.6B relates to group-wide supervision
27 of internationally active insurance groups. The commissioner
28 may act as the group-wide supervisor of an internationally
29 active insurance group in accordance with the provisions of
30 the new section. The commissioner may also authorize another
31 regulatory official to act as the group-wide supervisor based
32 on specified criteria. The provision requires the commissioner
33 to consider specific factors when determining whether the
34 commissioner or another regulatory official should act as the
35 group-wide supervisor. The commissioner is authorized to

1 collect information from any insurer registered in the state
2 as a member of an insurance holding company system and the
3 ultimate controlling person within the internationally active
4 insurance group as necessary for the commissioner to determine
5 or acknowledge who should be the group-wide supervisor.

6 The provision allows the commissioner to engage in
7 specified activities if acting as a group-wide supervisor.
8 The commissioner may also acknowledge that another regulatory
9 official is the group-wide supervisor and reasonably cooperate
10 with that official if the commissioner's cooperation complies
11 with Iowa law and the other official recognizes and cooperates
12 with the commissioner's activities as a group-wide supervisor
13 for other internationally active insurance groups.

14 An insurer registered in this state pursuant to Code chapter
15 521A must pay the reasonable expenses of the commissioner's
16 participation in the administration of new Code section
17 521A.6B, including the engagement of experts and all reasonable
18 travel expenses. The commissioner is required to adopt rules
19 pursuant to Code chapter 17A to administer the new provision.

20 Code section 521A.7(1) is amended to provide that all
21 information reported or provided to the commissioner pursuant
22 to Code section 521A.6A and new Code section 521A.6B must
23 be given confidential treatment, shall not be subject to
24 subpoena, shall not be subject to discovery or admissible in
25 evidence in a private civil action, and shall not be made
26 public by the commissioner or any other person except under
27 specified circumstances. The commissioner is authorized to
28 use such information, documents, or copies in the furtherance
29 of any regulatory or legal action brought as part of the
30 commissioner's official duties.

31 IOWA CEMETERY ACT. Code sections 521I.808 and 523I.813(1)
32 and (2) are amended to delete references to a fiscal year
33 relating to the time period when examination fees and annual
34 reports must be submitted by cemeteries to the commissioner.